

# Building Blocks for Effective Housing Elements

## Housing Programs: Preserve Units At-Risk of Conversion to Market Rate Uses

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*Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance (Government Code Section 65583(c)(6)).*

### I. REQUIRED COMPONENTS OF PROGRAM ACTIONS

Effective programs reflect the results of the local housing need analyses, identification of available resources including land and financing, and the mitigation of identified governmental and nongovernmental constraints. Programs are the specific action steps the locality will take to implement its policies and achieve goals and objectives. Programs must include a specific time frame for implementation, identify the agencies or officials responsible for implementation and describe the jurisdiction's specific role in implementation.

#### Sample Program Format

Description of Specific Actions Steps, Jurisdiction's Specific Role in Implementation and Demonstration of Commitment to Implement

Timeframe:

Responsible Agency:

Objectives (quantified, where possible):

Funding Sources (where appropriate):

## **II. PROGRAM REQUIREMENTS AND POLICY AND PROGRAM OPTIONS**

The nature of conversion risk varies significantly among projects depending on the type of subsidy and related affordability controls. Individual program responses should be tailored to the results of the analyses and specific local situations. The following strategies are not exhaustive:

### *Actions to Monitor*

- Establish an early warning system and monitor at-risk units. Create a list based on at-risk units in the ten year inventory and analyses (conversion risk, costs, and resources) for possible conversions within the current and next planning period. Monitor the list on a regular basis (i.e., every three months).
- Publicize existing State and federal notice requirements to nonprofit developers and property owners of at-risk housing.
- Gauge owner's intent to prepay a federally-assisted mortgage. Establish a relationship and meet with property owners of at-risk units on an annual basis.
- Gauge owners interest in renewal and/or opting-out of project-based Section 8 contracts. Determine whether profit-motivated owners intend to renew project based Section 8 contracts. Five to twenty-year HUD contracts are available subject to annual appropriations.
- Require owners who want to opt-out of a Section 8 contract, prepay a HUD subsidized mortgage or sell their property within five years of the expiration of the rental subsidy, to provide 18-24 months advance notice.
- Respond to any federal and/or State notices including Notice of Intent to Pre-Pay (Government Code Section 65863.10), owner Plans of Action, or Opt-Out Notices filed on local projects. Local governments (affected public agencies) receive these Notices and should quickly respond by contacting property owners.
- Hold a public hearing on the intended opt-out, prepayment or sale to ensure noticing requirements and potential strategies are examined and initiate assistance with tenants.

### *Actions to Finance and Technical and Regulatory Assistance*

- Allocate and support potential sources of funds for mortgage refinancing, acquisition and rehabilitation including gap funding for nonprofit housing developers as intermediaries and for rental subsidy assistance (California Housing Finance Agency, State HCD, predevelopment funds, tax-exempt

bonds, tax credits, Redevelopment Low and Moderate Income Fund, CDBG, HOME, etc.).

- Require replacement of low-income units converted to market-rate on a one-to-one basis.
- Act as an “intermediary” to temporarily preserve converted units until local housing sponsors can secure financing to repurchase and rehabilitate.
- Offer local incentives (lower interest rate loans and more favorable loan terms and conditions) to owners wishing to refinance and prepay their existing mortgage in exchange for continued affordability restrictions.
- Reduce, waive or subsidize local development fees associated with preservation or replacement of at-risk units.
- Incorporate preservation incentives/conversion disincentives into a Preservation Ordinance.

#### *Actions to Assist Tenants*

- Provide tenant relocation assistance and/or direct rental subsidies. In the event of owner mortgage prepayment or project based Section 8 opt-out, the enhanced voucher may not be sufficient to assure affordability or the new owner may refuse to accept housing choice vouchers. In such cases, local relocation assistance and additional rental subsidies may be necessary. Work with the local Public Housing Authority to determine the availability of tenant-based vouchers for tenants who choose to move from at-risk units or are displaced by conversion. Some jurisdictions have used redevelopment housing funds for replacement of Section 8 rental subsidies.
- Provide ongoing preservation technical assistance and education to affected tenants and the community at-large, on the need to preserve the existing affordable housing stock.

### **III. MODEL PROGRAMS**

#### *Sample Program 1*

The City will continue or undertake the following programs and activities during the five-year period of the housing element. The Housing Commission will implement these efforts, except where another division or agency of the City is identified. Funding sources to support the implementation of these efforts is specified where appropriate. The efforts listed below represent a varied strategy to mitigate potential loss of “at-risk” units due to conversion to market-rate units.

These local efforts utilize existing City and local resources. They include efforts to secure additional resources from the public and private sector should they become available.

#### 1. Preservation of “At-Risk” Units

- a. Administer an Acquisition and Rehabilitation Program to assist for-profit and nonprofit developers in acquiring and rehabilitating housing units that preserve affordability in rental projects that are at-risk of converting to market rents. Based on projected funding sources and levels, it is anticipated that approximately 600 units can be assisted.
- b. Monitor owners of at-risk projects on an ongoing basis, at least every three months, in coordination with other public and private entities to determine their interest in selling, prepaying, terminating or continuing participation in a subsidy program.
- c. Maintain and annually update the inventory of “at-risk” projects through the use of existing databases (e.g., HUD, State HCD and California Tax Credit Allocation Committee).
- d. Take all necessary steps to ensure that a project remains in or is transferred to an organization capable of maintaining affordability restrictions for the life of the project, including proactively ensuring notices to qualified entities, coordinating an action plan with qualified entities upon notice and assisting with financial resources or supporting funding applications.
- e. Bi-annually coordinate with HUD to monitor projects approved to convert to ensure that any required assistance (or assistance that the owner has agreed to provide) to displaced tenants is carried out in a timely manner. Ensure projects are monitored to see if they are subject to other State or local requirements regarding the provision of assistance to displaced tenants.
- f. Annually monitor local investment in projects that have been acquired by non- or for-profit entities to ensure that properties are well managed and maintained and are being operated in accordance with the City’s property rehabilitation standards.
- g. Work with owners, tenants and nonprofit organizations to assist in the nonprofit acquisition of at-risk projects to ensure long-term affordability of the development. Annually contact property owners, gauge interest and identify non-profit partners and pursue funding and preservation strategy on a project basis.
- h. Annually meet with stakeholders and housing interests to participate and support, through letters and meetings and technical assistance with local

legislators in federal, State or local initiatives that address affordable housing preservation (e.g., support State or national legislation that addresses at-risk projects, support full funding of programs that provide resources for preservation activities).

- i. Use available financial resources to restructure federally assisted preservation projects, where feasible, in order to preserve and/or extend affordability.
- j. Annually identify funding sources for at-risk preservation and acquisition rehabilitation and pursue these funding sources at the federal, State or local levels to preserve at-risk units on a project-by-project basis.
- k. Continue to assist owners or purchasers of existing Mortgage Revenue Bond (MRB) projects to refund their bonds in exchange for augmented and/or extended affordability controls. Annually contact property owners to gauge interest, provide list of resources available for refund and negotiate terms on a project-by-project basis.

#### Sample Program 2

In order to meet the housing needs of persons of all economic groups, the City must guard against the loss of housing units available to lower-income households. A total of 650 units in six HUD-insured projects are at-risk of conversion to market-rate prior to July, 2014. The City's objective is to either retain or replace as low-income housing all at risk units in the City. The community development department will implement the following programs on an ongoing basis to conserve its affordable housing stock.

- a. **Monitor Units At-Risk** - Lexington Green, Broadway Apartments, Broadway Apartments II, and Key Largo are all eligible to prepay their remaining HUD-insured Section 236 loans and opt out of low-income use restrictions any time. Furthermore, long-term Section 8 contracts for these projects have already expired. Section 8 subsidies for units in these four projects are renewed on short-term basis and may not be renewed in the future due either to lack of funding at the HUD level or owner decision to opt out of the Section 8 program. In addition, two other projects – Valley View Apartments and Silvercrest – have Section 8 contracts that are expiring before the end of 2010. The City will continue to monitor these apartments every three months.
- b. **Work with Potential Purchasers** - Establish contact with public and non-profit agencies interested in purchasing and/or managing units at-risk to inform them of the status of such projects. Where feasible, provide technical assistance and support to these organizations with respect to financing. The

City should actively pursue affordable housing opportunities and maintain a list of interested and qualified affordable housing developers. The City will update this list annually.

- c. ***Tenant Education*** - The California Legislature extended the required notification period, requiring property owners give a 12-month notice of their intent to opt out of low-income use restrictions. The City will work with tenants of at-risk units and provide them with education regarding tenant rights and conversion procedures. The City will also provide tenants in at-risk projects information regarding Section 8 rent subsidies through the Housing Authority, and other affordable housing opportunities in the City.
- d. ***Assist Tenants of Existing Rent Restricted Units to Obtain Priority Status on Section 8 Waiting List*** - HUD has set aside special Section 8 vouchers for existing tenants in Section 8 projects that are opting out of low-income use. Upon conversion, the units will stay affordable to the existing tenants as long as they stay. Once a unit is vacated and new tenants move in, the unit will convert to market-rate housing.

*Five-Year Objectives:*

- Preserve all 650 units in the six at-risk properties.
- The City will monitor, every three months, the status of any HUD receipt/approval of Notices of Intent and Plans of Action filed by property owners to convert to market-rate units.
- The City will annually identify and meet and pursue funding with non-profit organizations as potential purchasers/managers of at-risk housing units.
- As part of coordination with non-profit partners, the City will annually explore funding sources available to purchase affordability covenants on at-risk projects, transfer ownership of at-risk projects to public or non-profit agencies, purchase existing buildings to replace at-risk units, or construct replacement units.
- The City will provide tenant education within 30 days of a notice and assist tenants to obtain special Section 8 vouchers reserved for tenants of converted properties.

#### IV. PROGRAM IMPLEMENTATION SAMPLE

Form Letter to Qualified Entities (Government Code Section 65863.11)

(use owner's business letterhead)

Date

Name of *Qualified Entity*

Address of *Qualified Entity*

Reference: **Notice of Opportunity to Submit an Offer to Purchase**

Dear *Qualified Entity*:

The purpose of this notice is to inform **Qualified Entities** of an opportunity to submit an offer to purchase (*insert project name*), a privately owned government-assisted multifamily project, located at (*insert project address*) and owned by (*insert owners and agents names, addresses, telephone and fax numbers, and/or email addresses*) for 180 days from the date of this letter and prior to mortgage prepayment and/or termination of rental subsidies (opt-out).

(*Select one of the two options below*):

Your organization is identified as a **Qualified Entity** from the list maintained by the State Department of Housing and Community Development **OR** your organization has directly contacted the owner, and has evidenced interest in purchasing at-risk projects in the area where this project is located.

(*Select one of the three applicable descriptions below*):

The owner intends to end participation in \_\_\_\_\_ (*insert the mortgage financing program - Section 221(d)(3), Section 236, Section 202/811, Section 515 or IRS Section 42*) federal mortgage program through mortgage prepayment or termination **AND** terminate the contract for *project-based* Section 8 rental assistance, when it expires (opt-out).

**OR**

The owner intends to end participation in \_\_\_\_\_ (*insert the applicable mortgage financing program - Section 221(d)(3), Section 236, Section 202/811, Section 515 or IRS Section 42*) federal mortgage program through mortgage prepayment or termination.

**OR**

The owner intends to terminate the contract for *project*-based Section 8 rental assistance when it expires (opt-out).

**Prepayment and/ or Termination Date**

The owner intends to prepay the mortgage on \_\_\_\_\_, **AND/OR** terminate rent subsidies (opt-out) on \_\_\_\_\_ (*indicate applicable date(s), twelve-months from date of this letter*) \_\_\_\_\_.

**Project Information**

The owner is required to provide the following project information, within fifteen (15) business days via certified mail, return receipt requested, to any requesting or qualified entity on the Department of Housing and Community Development's list interested in submitting an offer to purchase:

- Terms of any assumable financing.
- Terms of any subsidy contracts.
- Any proposed improvement to the project to be made by the owner in connection with the sale.
- Itemized lists of monthly operating expenses.
- Itemized lists of capital improvements within the last two years.
- Amount of project reserves.
- Two most recent financial and physical inspection reports filed on the project with federal, state or local agencies, if any.
- Most recent rent roll listing rent paid for each unit and the subsidy, if any, paid by a government agency as of the date of the twelve-month **Notice of Intent** (Government Code Section 65863.10).

To request the above project information and to submit an offer to purchase, contact the owner and/or our agents at the addresses above.

**Qualified Entities** that intend to make an offer to purchase must identify themselves by type of organization (i.e. tenant association, nonprofit organization, public agency or profit-motivated organization or individual) and certify that the individual or organization meets the all qualified entity criteria pursuant to Government Code 65863.11.

Qualified Entities that make a bona fide offer to purchase have a right of first refusal to submit a counteroffer that meets the terms and conditions of any other pending offer for an additional 180 days.

Sincerely,

*Owner and/or his/her agent of federally assisted multifamily housing development*

**Note: A copy of this Notice has been posted in the common area of the development**



## **V. LINKS**

### **General**

[California Housing Partnership Corporation](#)

[Affordable Housing Programs Bibliography](#) - Department of Housing and Community Development

[List of Qualified Entities](#)

[Department of Housing and Urban Development \(HUD\)](#) offers information on financial assistance

[HUD Office of Affordable Housing Preservation](#)

[Notice of Funding Availability for CalHFA Housing Programs](#)

[Multiple-Family Housing Program](#) provides funding for all types of low-income multiple-family projects, including preservation of at-risk low-income housing.

[HCD Publication Listing Different Funding Sources for Housing Affordable to Lower Income Households](#)

[HCD website for preserving at-risk units](#), including sample notices, checklists and forms

[National Housing Trust, State and Local Housing Preservation Initiatives](#)

### **Program Links**

[City of Walnut Creek Affordable Housing Preservation Program](#)